

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANNUITY, PENSION, WELFARE AND  
TRAINING FUNDS OF THE INTERNATIONAL  
UNION OF OPERATING ENGINEERS  
LOCAL 14-14B, AFL-CIO, *et al.*,

Plaintiffs,

-against-

TRICON ENTERPRISES, INC.,

Defendant.  
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**TOWNES, United States District Judge:**

In August 2007, plaintiffs – the Annuity, Pension, Welfare and Training Funds of the International Union of Operating Engineers Local 14-14B, AFL-CIO (the “Funds”), and the trustees of the Funds – commenced this action pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* (“ERISA”), seeking to recover contributions allegedly owed to the Funds by defendant Tricon Enterprises, Inc. Defendant failed to timely answer the complaint and, in papers dated November 27, 2007, plaintiff moved for a default judgment. The Clerk of Court entered default on November 28, 2007, and this matter was subsequently referred to Magistrate Judge Raymond E. Reyes, Jr. .

On November 20, 2008, Magistrate Judge Reyes issued a report and recommendation (the “R&R”) recommending that this Court award plaintiffs \$6,639.68 in delinquent contributions, \$561.20 in prejudgment interest, another \$561.20 in liquidated damages, \$1,638.75 in reasonable attorney’s fees and \$405.00 in costs – a total of \$9,805.83. R&R at 8. Magistrate Judge Reyes also recommended denying plaintiffs’ request for an order directing defendants to produce their books and records for an audit. *Id.*

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U.S. DISTRICT COURT E.D.N.Y.

DEC 18 2008 ★

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**ORDER**

07-CV-3289 (SLT) (RER)

The R&R specifically advised plaintiff that any objections to the R&R had to be received by the Court within ten business days of plaintiff's receipt thereof. *Id.* Per Magistrate Judge Reyes' instructions, plaintiffs' counsel served the R&R on defendant on November 21, 2008, by mailing a copy of the R&R to the address provided by defendant to the New York Department of State for service of process. *See* Certificate of Service by James M. Steinberg, Esq., dated Nov. 21, 2008; *see also* [http://appsext8.dos.state.ny.us/corp\\_public/CORPSEARCH.SELECT\\_ENTITY](http://appsext8.dos.state.ny.us/corp_public/CORPSEARCH.SELECT_ENTITY). Although service was complete upon mailing, *see* Fed. R. Civ. P. 5(b)(2)(B), plaintiffs' decision to serve defendant by mail had the effect of extending the ten-day deadline by three days. *See* Fed. R. Civ. P. 6(e). Accordingly, defendant's objections to the R&R were due on December 11, 2008.

As of the date of this order, this Court has not received any objections to the R&R. Accordingly, the Court has reviewed the R&R for clear error on the face of the record. *See* Advisory Comm. Notes to Fed. R. Civ. P. 72(b); *accord Edwards v. Town of Huntington*, No. 05 Civ. 339 (NGG) (AKT), 2007 WL 2027913, at \*2 (E.D.N.Y. July 11, 2007); *McKoy v. Henderson*, No. 05 Civ. 1535 (DAB), 2007 WL 678727, at \*1 (S.D.N.Y. Mar. 5, 2007). The Court finds no clear error, and therefore adopts the R&R in its entirety as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

### ***CONCLUSION***

For the reasons stated above, Magistrate Judge Reyes' Report and Recommendation dated November 20, 2008, is adopted in its entirety. The Clerk of Court is directed to enter judgment in favor of plaintiffs and against defendant Tricon Enterprises, Inc., in the amount of \$9,805.83.

Plaintiffs' request for an order directing defendants to produce their books and records for an audit is denied.

SO ORDERED.

s/ SLT  
/ SANDRA L. TOWNES  
United States District Judge

Dated: Brooklyn, New York  
December 17, 2008